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## Appeal Decisions

Inquiry held on 12 -13 May 2015

Site visit made on 13 May 2015

**by Louise Phillips MA (Cantab) MSc MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 03 July 2015**

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**Appeal Ref: APP/L5810/W/14/3002030 (APPEAL 1, SCHEME 1)**  
**HM Resettlement Prison, Latchmere House, Church Road, Ham,**  
**Richmond TW10 5HH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Berkeley Homes (Central London) Limited against the decision of the Council of the London Borough of Richmond-upon-Thames.
  - The application Ref DC/ANO/14/0451/FUL, dated 7 February 2014, was refused by notice dated 5 January 2015.
  - The development proposed is "Demolition of the existing buildings, excluding Latchmere House, and the provision of 42 residential units (Use Class C3) comprising 35 new build units and the conversion and ground floor extension of Latchmere House to provide 7 apartments. Associated highways works, landscaping, tree works and car parking. Cross-boundary application also comprising land within the Royal Borough of Kingston upon Thames and providing in total 73 residential units, including 66 new build units and 7 apartments within the converted and extended Latchmere House".
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**Appeal Ref: APP/L5810/A/14/2224608 (APPEAL 2, SCHEME 2)**  
**HM Resettlement Prison, Latchmere House, Church Road, Ham,**  
**Richmond TW10 5HH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Berkeley Homes (Central London) Limited against the Council of the London Borough of Richmond-upon-Thames.
  - The application Ref 14/0450/FUL, is dated 7 February 2014.
  - The development proposed is "Demolition of the existing buildings, excluding Latchmere House, and the provision of 58 residential units (Use Class C3) comprising 51 new build units and the conversion and ground floor extension of Latchmere House to provide 7 apartments. Formation of a new highways access from Latchmere Lane. Associated highways works, landscaping, tree works and car parking. Cross-boundary application also comprising land within the Royal Borough of Kingston upon Thames and providing in total 89 residential units, including 82 new build units and 7 apartments within the converted and extended Latchmere House".
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### Decision

1. Appeal 1, Scheme 1 is allowed and planning permission is granted for the demolition of the existing buildings, excluding Latchmere House, and the provision of 42 residential units (Use Class C3) comprising 35 new build units and the conversion and ground floor extension of Latchmere House to provide 7 apartments, with associated highways works, landscaping, tree works and

car parking at HM Resettlement Prison, Latchmere House, Church Road, Ham, Richmond TW10 5HH in accordance with the terms of the application, Ref DC/ANO/14/0451/FUL, dated 7 February 2014, subject to the conditions set out in the attached schedule.

2. Appeal 2, Scheme 2 is dismissed and planning permission is refused.

### **Preliminary Matters**

3. The appeal form for Scheme 1 gives the name of the appellant as Mr Oliver Jefferson, of Turley Associates. However, following confirmation by the parties, it is clear that the appeals for both Scheme 1 and Scheme 2 should proceed in the name of Berkeley Homes (Central London) Limited. Further, while the form for Scheme 1 indicates that the appeal is against the Council's failure to determine the application within the prescribed period, a formal decision was issued before the appeal was validated. Therefore both parties are satisfied that I should treat the Scheme 1 appeal as being against the refusal of planning permission and I have done so accordingly. The Scheme 2 appeal is clearly against the Council's failure to determine the application within the prescribed period.
4. Both Schemes relate to the same development site, part of which falls within the administrative area of the neighbouring Council – the Royal Borough of Kingston upon Thames (RBKT). For the reasons explained in Inquiry Document [ID] 3, identical applications were submitted to each authority, and RBKT has granted planning permission for the land within its jurisdiction in both cases (Core Documents [CD] 4.10 and 4.11). I have looked at the proposals comprehensively and have had regard to RBKT's decisions to the extent that they demonstrate its support for them, but my decisions apply only to the land on the Richmond side of the boundary. Nevertheless, I recognise that development cannot commence in RBKT unless planning permission is also granted in Richmond by virtue of the S106 Agreements<sup>1</sup> made by the appellant and RBKT (CDs 4.12 and 4.13). I have taken this into account in determining the appeals.
5. Richmond Council refused planning permission for Scheme 1 based on its assessment that the appellant had underestimated the financial viability of the development and had not, therefore, proposed the maximum reasonable amount of on-site affordable housing (CD 4.4A). Whilst no formal decision has been issued in respect of Scheme 2, the Council's report to Committee and its Committee minutes (CDs 4.2 and 4.4) provide the reasons for which it would have refused permission had it been empowered to do so. The first reason relates to viability and affordable housing provision as with Scheme 1, while the second and third reasons concern the effect of the proposed development upon the character and appearance of the Conservation Area and the "locally listed" Building of Townscape Merit (Latchmere House).
6. Before the Inquiry opened, the main parties reached agreement on the maximum level of affordable housing which could be provided with Scheme 1. The agreement is summarised in section B of the original Statement of Common Ground, dated 28 April 2015, which explains that the residential mix and tenure split proposed would be acceptable (paragraph 2.2.3); and that the scheme would contribute significantly towards housing need within the Borough

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<sup>1</sup> S106 of the Town and Country Planning Act, 1990.

- (paragraph 2.2.5). On this basis, the Council decided not to defend its refusal of Scheme 1 at the Inquiry (paragraph 2.2.6). In its opening remarks, it took the position that planning permission should be granted subject to suitable conditions (ID 5, paragraph 2).
7. By the time the Inquiry took place, the parties had also agreed upon the maximum reasonable amount of affordable housing which could be provided with Scheme 2. The revised position is set out in Section C of the updated Statement of Common Ground, dated 11 May 2015 (ID 1). As with Scheme 1, they now agree that the residential mix and tenure split proposed is acceptable (paragraph 2.3.2); that the proposal would contribute significantly towards housing need (paragraph 2.3.4); and that the Council would not defend its first reason for refusal at the Inquiry (paragraph 2.3.4).
  8. It is clear from the updated Statement of Common Ground and the submitted Proofs (particularly those of Robert Fourt for the appellant and Nicola Simpson for the Council) that the agreed position on viability reflects the application of the Vacant Building Credit introduced by the Government in November 2014. Nevertheless, the written evidence before me continues to differ in respect of the parameters used for modelling purposes; the estimated scale of the financial surplus or deficit; the role of grant funding; and the extent to which the affordable housing provided would meet identified local needs. I therefore sought further explanation at the Inquiry.
  9. The parties addressed my questions in a further Statement of Common Ground on viability, dated 12 May (ID 8), as well as in their Closing Submissions (IDs 15 and 16). Furthermore, while the RBKT has expressed disappointment that both Schemes would now provide less affordable housing than when it made its decisions, it decided not to offer any further evidence to the Inquiry (ID 11). Consequently, I have no reason to dispute the agreement between Richmond Council and the appellant that Schemes 1 and 2 before me would provide the maximum reasonable amount of affordable housing while remaining deliverable. Therefore, although I acknowledge Richmond's "very strong preference on affordable housing grounds for Scheme 1" (ID 15, paragraph 13), this matter would not cause me to dismiss either appeal. Thus it is not a main issue for my consideration.

## **Main Issues**

10. For the reasons above, the main issues for my decisions are the effect of the Scheme 2 proposal upon the setting of Latchmere House as an identified Building of Townscape Merit/non-designated heritage asset; and whether it would preserve or enhance the character and appearance of the Ham Common Conservation Area.

## **Reasons**

### The Site and its Surroundings

11. The last use of the appeal site was as a remand centre/resettlement prison, but it is now surplus to requirements and has been vacated. It is occupied by Latchmere House, an identified Building of Townscape Merit (CD 3.8), which benefits from enhanced protection under Policy DM HD3 of the Development Management Plan; and by a number of largely utilitarian one and two storey

- prison buildings. These buildings are surrounded by high security fencing and/or a concrete wall, and the wall also surrounds Latchmere House itself.
12. There is a great deal of hardstanding across the site as a whole, including around Latchmere House, but it also contains some significant areas of green space and a number of mature trees. The green spaces include a wide strip of grassland to the south and east of Latchmere House outside the perimeter wall adjacent to Latchmere Lane; and an area to the north-west of the prison gates through which access is currently achieved via Church Road. The latter comprises trees along the boundary of the site with Church Road as well as an informal green space between the prison and the adjacent residential properties on Latchmere Close. Whilst there is some intervening paving, the green areas to which I have referred essentially provide a softer edge around the east side of the existing prison buildings.
  13. Some of this area at the eastern extent of the site falls within the Ham Common Conservation Area, a designated heritage asset. The Conservation Area is one of four neighbouring designated areas described by the Council in the Ham and Petersham Conservation Area Character Appraisal and Management Plan, March 2007 (CD 3.9). Together, they comprise a distinctive semi-rural environment, which includes the historic village centres of Ham and Petersham and a collection of architecturally important residences in a landscaped, riverside setting. Ham Common Conservation Area is particularly significant for its formal village green, framed by mansions, detached houses and cottages, which links to a substantial woodland that continues along the north side of Church Road as far as the appeal site.
  14. The Conservation Area boundary runs along the access drive leading to Latchmere House, and includes the house itself and a small area to its south and east within the perimeter wall. The boundary was extended along Church Road from St Andrew's Church to Latchmere House in 2004, to include the larger properties and their associated gardens, and to reflect the status of these particular buildings as landmarks /gateways to the common. I heard evidence that the extended boundary was deliberately tightly drawn to distinguish between the predominantly green area of the common to the north, and the suburban housing area which surrounds the site to the south, east and west.
  15. Both the southern strip of grassland beyond the perimeter wall and the Latchmere Close green to which I have previously referred about this suburban development, and this perhaps explains why they fall outside the Conservation Area. By contrast, the inclusion of Latchmere House itself within the boundary identifies it as being important, or at least complementary, to the semi-rural character area, although it is clear that the appeal site occupies a transitional location.
  16. Turning to Latchmere House in detail, the property is important in its own right as a Building of Townscape Merit and non-designated heritage asset for the purposes of paragraph 135 of the National Planning Policy Framework (the Framework). Its significance derives from a variety of factors, including its original status as a grand residence within its own estate; its ability to illustrate the architectural style of the period and its historical interest as it has been adapted for different uses over time. The property served briefly as a military hospital in the First World War; it was likely used as a detention centre for

German spies in the Second World War; and since 1948, it has served as a prison.

17. However, notwithstanding the significance arising from the changing use of the building, both parties agree that any redevelopment of the site should seek to better reveal its original condition as a substantial dwelling in its own extensive grounds. This is reflected in the Planning Brief for the site (prepared jointly by RBKT and Richmond Council), which seeks a residential-led scheme with a strong emphasis on overall open space and landscape strategy (CD 3.3, paragraph 4.3). I agree with the appellant that if the setting, and therefore the significance, of Latchmere House were to be enhanced by such a scheme, the Conservation Area within which it lies would also be enhanced in consequence. Conversely, if harm were to be caused to the significance of Latchmere House, this could be harmful to the Conservation Area.

#### The Appeal Schemes and their Effects

18. Schemes 1 and 2 are similar in many respects. Both would comprise wholly residential developments which would necessitate the removal of the existing prison buildings. Much of the hardstanding constituting their yards and parking areas would also be removed, as would all of the high security fencing within the site and the majority of the concrete perimeter wall. Latchmere House would be retained, restored and extended to provide seven residential apartments, and the area immediately to its north/front would be set out as a formal garden. The land adjacent to its south and east "garden" elevations would be landscaped to form a semi-private outdoor area for future residents, and part of the southern strip of land adjacent to Latchmere Lane would be kept free of housing to provide it with a wider "parkland" setting.
19. I return to the effects of Scheme 2 on the southern parkland shortly, but in respect of the elements described above, the parties broadly agree that both proposals would result in the direct enhancement of Latchmere House, including by securing it a long-term viable use. They would also enhance the setting of the building and, in turn, the character and appearance of the Conservation Area would be enhanced. I agree with this position and it weighs in favour of the development in both cases.
20. However, the schemes differ in two main ways and these form the basis of the Council's continuing objection to Scheme 2. Firstly, while Scheme 1 would utilise only the existing vehicular access from Church Road to the north-west, Scheme 2 would include a second one across the parkland onto Latchmere Lane. Secondly, whereas Scheme 1 would provide the newly constructed dwellings exclusively in the form of houses, Scheme 2 would include three apartment blocks which were originally intended to accommodate the affordable housing units. The Council is concerned about the effect of Block B, which would be in close proximity to Latchmere House. I address these matters in turn below.

#### *The Proposed Additional Access*

21. As already explained, the appellant's landscape strategy for the site envisages the area to the south and east of Latchmere House as a combination of semi-private garden and informal parkland. With the removal of the existing perimeter wall, this area would become much more clearly associated with Latchmere House than it is at present, and its treatment would certainly evoke

something of its original garden setting. Whilst Figure 4.9 of Mr Brookes' Proof of Evidence shows the building in a far larger private garden than would now be created, I accept that the proposal seeks to balance the heritage objectives of the Planning Brief with those concerning public access.

22. Nevertheless, the proposed new driveway is not required to improve public access from a highways perspective as the existing Church Road junction would have adequate vehicular capacity for both schemes (Transport Assessment, CD 5.4). Nor would it contribute to the permeability of the site for general traffic in the area, for it would constitute a no-through route. I therefore consider that the main public access benefits would accrue from the pedestrian pathways which would traverse the parkland and enable people to walk through the site and so, despite all the evidence I have read and heard, the intended purpose of the proposed access is not particularly clear to me.
23. This would not matter if I were to conclude that the access would not detract from the setting of Latchmere House or from the character and appearance of the Conservation Area, and the appellant's case is that it would enhance both. It is certainly true that the roadway would not be excessively wide and it would be surfaced in a resin bound hoggin-type material which is commonly found on footpaths and driveways throughout the Conservation Area. However, if it were constructed, it is anticipated that this access would carry the majority of the development traffic and the frequent presence of cars and other vehicles would be at odds with the concept of a garden/parkland environment.
24. Moreover, the roadway would pass very close to the south west corner of Latchmere House so that beyond its patio area, the semi-private garden would feel really quite small. Whilst the landscape feature near to the south-east corner of the house (the "ha-ha") would also constrain the size of this area, it would feel all the smaller because the road would make the transition from the garden to the parkland more abrupt. Although the private garden would be a direct benefit of the proposed development, much of the benefit to be derived from the parkland could be achieved by the removal of the wall and by tidying up the strip of land adjacent to Latchmere Lane. Consequently, I do not consider that the advantages brought by this particular part of the scheme would compensate for the negative effects of the access. Nor am I convinced that the access would bring any significant benefit by opening up public views of Latchmere House from the south, as this would originally have been the more private face of the dwelling.
25. For these reasons, I consider that the proposed access would be a detrimental feature of Scheme 2 which would be harmful to the garden setting of Latchmere House. Whilst the Planning Brief does identify the potential for a new access onto Latchmere Lane in both the transport and design sections, this is presented as an option to be investigated in the light of "considerable local sensitivity" (paragraph 5.19). I do not consider that the solution proposed in this case would be sensitive. I turn below to the question of whether my findings in this regard should cause the Scheme as a whole to fail.

#### *Apartment Block B*

26. Both Schemes 1 and 2 have been drawn up by an award winning architect and it is clear that significant work has gone into the overall design concept for the site. The intention is to retain and enhance Latchmere House at the heart of the development and, to this end, the newly constructed streets and buildings

- should, along with appropriate landscaping, frame it in important views. Thus, two pairs of semi-detached "gatehouses" are proposed at the entrance to both Schemes in order to draw the eye towards the principal north elevation of Latchmere House and I consider that this would be rather successful.
27. Apartment Block B would be sited to the south of the western gatehouse, opposite but partly to the north of Latchmere House looking onto its formal garden. The front elevation would be curved to follow the road, which would extend the existing access drive to sweep around the west side of Latchmere House. The building would be part two storeys, and part three storeys tall with the highest point in the centre. As with the gatehouses, the architectural philosophy is that the height and form of the block, in combination with its relationship to the road, would frame Latchmere House as the focal point of the scheme. A curved terrace of three storey dwellings would be located to the south of the existing building for the same purpose.
28. Fundamentally, I agree that the design technique proposed would be effective in drawing the eye to Latchmere House and the internal road layout would allow it to be seen from all directions. It is unfortunate, though, that the view of the principal façade from the north would be interrupted by new trees proposed to be planted to the rear of the gatehouses, presumably to prevent through-traffic from the additional Latchmere Lane access. It also appears that they would prevent vehicles arriving at the front of the property by its original driveway. Therefore, while the landscaping would no doubt be permeable to the eye, its presence here would seem to compromise the overall design objective to a significant extent.
29. However, in respect of Block B itself, while the building would be both tall and deep, the use of stepped facades and different roof heights would break up its mass so that it would not appear unduly bulky. Indeed much of its depth would be 'hidden' to the rear of the adjacent houses and the presence of the aforementioned trees would help to screen its northern side elevation in longer views from the access. The front elevation would be set close to the road and it would feel close to Latchmere House, but, even at its highest point, it would not be as tall as the existing building. Furthermore, given the relationship of the main façade to the formal garden of Latchmere House, and because this would curve away from the principal elevation of the latter, the feeling of open space between the buildings would be sufficient to offset any sense of enclosure. For the same reason, I do not consider that Block B would dominate Latchmere House or detract from its status as a landmark building.
30. Consequently, Block B would not be detrimental to the setting of the non-designated heritage asset and thus it would also cause no harm to the character and appearance of the Conservation Area.

### *Scheme 2 Overall*

31. Whilst I consider that the design of Block B would be acceptable in its context, I have found that the proposed new access onto Latchmere Lane would be detrimental to the garden setting of Latchmere House. It would therefore harm its significance as a non-designated heritage asset. As confirmed above, it follows that it would also harm the significance of the Conservation Area, the designated heritage asset. Indeed this is not just a technical point, for Latchmere House was included within the designated area as a large house

- with associated gardens; and to provide separation from the adjacent suburban area.
32. Together with the statutory duty provided by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraphs 128 – 140 of the Framework set out how development proposals involving heritage assets should be assessed, including the tests to be applied if harm is found. It has been put to me by the appellant that my ultimate conclusion in respect of Scheme 2 must reflect the impact of the proposal *as a whole* on the heritage asset *as a whole*, having made a comparison of the existing and proposed positions (ID 16, paragraphs 83-84). This is primarily because the Framework refers to considering the effects of a “proposed development” or “an application” upon a designated or non-designated heritage asset; and particularly because paragraph 135, which relates to applications affecting non-designated assets, requires a balanced judgement to be made “having regard to the scale of any harm or loss and the significance of the heritage asset”.
33. Firstly, I do not question the merit of performing an “internal heritage balance”, but I do not agree that this can be reduced to a mathematical equation as suggested in paragraph 85 of the appellant’s Closing Submissions (ID 16). It seems to me quite reasonable that a physically small part of a development found to cause significant harm could legitimately outweigh a much larger element that would do only moderate good. Therefore, while I acknowledge that the term is not specifically used in the relevant law or policy, I agree with the Council that certain enhancements brought by a scheme cannot properly be held to justify “avoidable harm” elsewhere (ID 15, paragraph 6).
34. Secondly, while it is plainly necessary to consider the effect of a proposal in light of the existing position, this too must be treated with caution. Otherwise in the extreme, a very poor starting point could be used to justify a solution that was only a little better. Paragraph 130 of the Framework provides that “where there is deliberate neglect of or damage to a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision”, and this indicates that it cannot be the intention of policy makers to facilitate a substandard outcome.
35. In any case, if any doubt remains as to the proper interpretation of heritage policy, paragraph 64 of the Framework is clear in terms of general design that “permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions”. Likewise, my attention was drawn to Policy 7.6 of the London Plan (CD 2.1) which, amongst other things, requires that architecture should incorporate the highest quality materials and design appropriate to its context; and that buildings and structures should “be of the highest architectural quality”. If such concepts are generally applicable to all schemes, they must surely apply to those with the potential to harm irreplaceable heritage assets.
36. Applying the above to the present case, Scheme 2 includes numerous elements already described which would enhance the setting of Latchmere House and have a positive effect on the character and appearance of the Conservation Area. All would better reveal the significance of the non-designated and designated heritage assets concerned and I give this considerable weight in my decision. I also give some weight to the replacement of the utilitarian prison



buildings with housing of generally good design, but this is tempered by the fact that the existing buildings do impart some significance to Latchmere House in respect of its former use.

37. Against this however, I find that the provision of the additional access onto Latchmere Lane would be harmful to the setting of Latchmere House in a way that would also directly diminish its contribution to the special character of the Conservation Area. In respect of Latchmere House, the access would detract from the fundamental quality the proposal seeks to evoke i.e. the status of the building as a high-class dwelling in its own grounds. It would also provide a formal and deliberate link with the suburbia from which it should sit apart and, for both these reasons, I give the harm it would cause significant weight. Moreover, the harm would not be justified by any functional need related to access and so it would essentially be unwarranted. This further increases the weight I give to it.
38. Turning to the Conservation Area, the detrimental effect of the access upon the setting of Latchmere House would, in the terms of paragraph 134 of the Framework, cause "less than substantial harm" to the designated heritage asset. Nevertheless, having regard to paragraph 132 of the Framework, I give great weight to the harm that would be done. Therefore, for the reasons already given, I conclude that in the "internal heritage balance", the harm which would be caused by Scheme 2 would outweigh the benefits it would bring.
39. Thus it would cause unacceptable harm to the setting of the identified Building of Townscape Merit/non-designated heritage asset. It would be contrary to the objectives of Policy CP7 of the Core Strategy, to protect buildings recognised for their high quality and historic interest; and to Policy DM HD3 of the Development Management Plan, which specifically seeks to protect and enhance the setting of Buildings of Townscape Merit. The Scheme would also fail to preserve the character and appearance of the Ham Common Conservation Area, contrary to Policy DM HD1 of the Development Management Plan and to the provisions of the Framework. To the extent that Ham Common is also designated as Metropolitan Open Land, the Scheme would also conflict with the objective of Core Strategy Policy CP10 to safeguard its heritage value. I consider the overall planning balance further below.

## **Other Matters**

### *Scheme 1*

40. Whilst the main parties take the view that planning permission should be granted for Scheme 1, I have had regard to the concerns raised by interested parties, particularly in relation to its implications for highway safety on Church Road.
41. The appellant's Transport Assessment (CD 5.4) concludes that the proposed development, combined with existing development served by the Church Road access, would result in fewer traffic movements during the morning and evening peak hours than did the previous prison use. Whilst survey data for the prison is based on movements to and from a similar facility in Kent which is smaller (Blantyre House), paragraph 5.4 of the Transport Assessment confirms that the results have been factored up to take account of the number of staff and inmates at Latchmere House.

42. Interested parties are concerned that the assessment is based on selective peak hours whereas the previous prison traffic was steady throughout the day. However, because trip patterns associated with residential development usually give rise to the greatest traffic impact in the morning and evening, I consider the approach to be appropriate. The survey data used for the Assessment did not take account of prison staff living locally and travelling to work by non-car modes, but evidence was produced at the Inquiry to demonstrate that if 30 staff were assumed to have walked from Latchmere Close, the net impact of the scheme would still be less than the previous use (ID 13).
43. In respect of highway safety more generally, Church Road is fairly narrow and has a rural feel. Whilst I can accept that traffic often moves quickly, the carriageway is long and straight and visibility is good in both directions. There is no formal pavement, but it is possible to walk on a footpath of sorts, comprising a verge with a partially gravelled surface, all the way from the site to Ham Common. I understand that the road is unlit, but there are a number of traditional street lamps in the vicinity of the Bainbridge Close junction and I know of no fundamental reason why they could not be made to work.
44. Therefore, while I appreciate the concerns of local residents, I do not consider that the proposal would have a detrimental effect on highway safety in Church Road. My view is supported by the lack of objection from the local highway authority, and by the conclusion of the appellant's Road Safety Appraisal that "no material increase in risk to road users is to be anticipated as a result of the proposed development access arrangement".
45. In reaching my decision, I have also taken account of the concerns raised in relation to the living conditions of residents at Nos 149 and 151 Latchmere Lane. The rear gardens of these properties would be adjacent to the side elevation of a new 2.5 storey house, which would, overall, be taller and larger. However, the new property would be some distance away from the existing dwellings towards the end of their gardens, and their relative orientation would be such that the latter would not experience any significant loss of sunlight. Moreover, the new dwellings would be single storey at the rear where they would be closest to those on Latchmere Lane and so I am satisfied that the relationship would not be overbearing.
46. I have had regard to the completed legal agreement made under Section 106 of the Act (ID 17), which would make provision for 12 affordable rented houses and one shared ownership house; the inclusion of a public open space equipped with children's play facilities; the setting out and maintenance of pedestrian routes across the site; a Travel Plan; and a Demolition and Construction Management Plan. In accordance with the Council's policies, I consider that all of these planning obligations would be necessary, directly related to the development and fairly related in scale and kind to the development as required by paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010. Both the appellant and the Council agree with my assessment and neither party considers that any other obligations are required.
47. Therefore, having considered the matters raised by interested parties in respect of Scheme 1, I find no reason to disagree with the main parties that the appeal should be allowed.

## *Scheme 2*

48. The Scheme 2 proposal would provide a total of 89 dwellings, including 16 affordable units, and, given the Government's aim in paragraph 47 of the Framework to "boost significantly the supply of housing", this would be a significant benefit of the development. Furthermore, it would be a benefit which would accrue to residents of both Richmond Borough and of RBKT. The fact that the Council is able to demonstrate a five year supply of deliverable sites for housing against its present target does not diminish this benefit in any way because, as the Inspector who examined the Further Alterations to the London Plan concluded, "the existing London Plan strategy will not deliver sufficient homes to meet objectively assessed need" (CD 2.2, paragraph 57). In any case, Policy 3.3 of the London Plan encourages London Boroughs to achieve "and exceed" the relevant minimum annual average required of them.
49. However, I have found that the proposal would not accord with the development plan for the Borough due to the harmful effect it would have upon both a designated and non-designated heritage asset. Therefore, the presumption in favour of sustainable development set out in paragraph 14 of the Framework does not apply. Indeed, footnote 9 to paragraph 14 confirms that the policies in the Framework relating to designated heritage assets are capable of being policies which specifically indicate that development should be restricted. Therefore, while the benefit of housing is a weighty material consideration in favour of the proposal, it does not outweigh the particular harm I have found.
50. I therefore intend to dismiss the appeal on the basis of the main issue above and so the obligations provided in the S106 Agreement (ID 18) are a neutral factor in the planning balance. As they could not be determinative of the outcome, I have not considered them further in respect of the relevant tests in law and policy. Similarly, my decision does not turn upon the additional concerns raised by interested parties in relation to the effect of apartment blocks A and C upon the character and appearance of the area; or the effect of the Latchmere Lane access upon highway safety.

## **Conclusion**

51. For the reasons given above, I conclude that Appeal 1 in respect of Scheme 1 should be allowed; but that Appeal 2 in respect of Scheme 2 should be dismissed. Planning permission for the latter should therefore be refused.

## **Conditions for Scheme 1**

52. The Statement of Common Ground, supplemented by Inquiry Documents 9 and 12, sets out the conditions which the parties agree should be imposed in the event either appeal is allowed. I have considered them in light of the tests in paragraph 206 of the Framework and the advice in the Planning Practice Guidance (PPG).
53. I have imposed the standard time limit for the commencement of development as well as a condition requiring it to be carried out in accordance with the approved plans. The latter is for the avoidance of doubt and in the interests of proper planning. The condition requiring details to be submitted of ancillary site buildings and parking arrangements during construction is necessary to protect the living conditions of nearby occupiers and to manage potential risks

to highway safety. The resultant measures should supplement those to be secured through the S106 Agreement.

54. Details of proposed materials, boundary treatments and street furniture etc. are required to protect the character and appearance of the area and it is necessary to seek details of cycle parking facilities to ensure that future residents have the option to utilise sustainable modes of transport. The conditions relating to bats and existing trees are required to ensure that adequate protection is afforded to them; while details of a play area are required to achieve compliance with Council policies.
55. The conditions in respect of Lifetime Homes and water use are necessary to ensure that the dwellings are constructed to the expected high standard and those relating to flood risk and contamination are required to minimise risks to public safety and human health. The landscaping conditions are required to protect the character and appearance of the area in the long term, and the requirement to set out and retain garaging and parking space is necessary to provide good living conditions.
56. Having regard to the advice in the PPG, I agree that it is necessary to remove permitted development rights for the construction of extensions. This is in light of the heritage value of the site and the importance of the proposed green and landscaped areas to secure it. Finally, the condition to prevent the use of flat roofs as balconies or similar is required to protect the living conditions of existing and new residential occupiers, as is that intended to manage noise emitted by the CHP plant.

*Louise Phillips*

INSPECTOR

### **Schedule of Conditions – Scheme 1**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed on Drawing Transmittal Sheet BKH04, Issue No 003, dated 10 January 2014; supplemented by the Schedule of Amended drawings dated 31 December 2014 submitted with the appeal (CDs 8.1 and 8.3). For the avoidance of doubt, Drawing No P\_207 Rev. 01, dated 13 June 2014 is the approved version; and Drawing No P\_301 Rev 0, dated 27 September 2013 is approved.
- 3) No development, including any works of demolition, shall take place until details of the location of all ancillary site buildings; and the parking of vehicles of site operatives and visitors have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development, except for works of demolition, shall take place until details of the following have been submitted to and approved writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - a) The materials to be used in the construction of the external surfaces of all buildings hereby approved, including their colour and texture.
  - b) Boundary treatments, including walls, fences and gates.
  - c) The treatment and layout of all parts of the site not covered by the approved buildings, including hard and soft landscaping. All hard surfaces shall be made of porous materials.
  - d) Refuse storage facilities.
  - e) Street furniture and lighting.
  - f) Sewer and drainage runs.
  - g) Any external plant and equipment.
  - h) Details and siting of solar panels.
- 5) No development, except for works of demolition, shall take place until details of secure cycle parking facilities for the occupants of the dwellings hereby approved have been submitted to and approved writing by the local planning authority. The facilities shall be implemented in accordance with the approved details prior to the occupation of the dwellings and shall be retained as such thereafter.
- 6) No development, including any works of demolition, shall take place until a scheme for bat conservation and mitigation, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The scheme shall provide for:
  - a) Inspection of the existing trees on the site within one month prior to their felling to establish the presence or absence of roosting or hibernating bats.
  - b) No trees containing bats shall be felled until the bats have been safely excluded by such methods as have been previously submitted to and approved in writing by the local planning authority.

c) Identification and retention of trees and hedgerows which are important for foraging bats.

d) No artificial lighting to directly illuminate any features of value to foraging or commuting bats, such as boundary trees.

Development shall be carried out in accordance with the approved scheme.

7) No development, including any works of demolition, shall take place until a detailed Arboricultural Method Statement, including a Tree Protection Plan, has been submitted to and approved in writing by the local planning authority. The Statement shall include:

a) An appropriately scaled plan to show the positions, crown spreads and root (RPA) of every retained tree on site, and on nearby land adjacent to the site, in relation to the approved plans.

b) A schedule of pre-construction tree works for the retained trees shown under part a).

c) Details and positions of any necessary tree protection barriers and of any ground protection measures.

d) Details and positions of construction exclusion zones.

e) Details and positions of existing and proposed underground service runs, the latter to be routed to avoid RPAs as far as possible.

f) Details of any changes in levels or excavations within 5m of the RPA of any retained tree.

g) Details of any special engineering required to accommodate the protection of retained trees, such as in connection with foundations, service installations, bridging water features, or surfacing.

h) Details of the working methods to be employed for the installation of driveways and paths within the RPA of any retained trees. The methods shall be in accordance with the principles of "No Dig" Construction; and with British Standard 5837:2005.

The measures set out within the approved Statement shall be implemented prior to the commencement of development and shall be maintained to the satisfaction of the local planning authority until its completion.

8) No development, except for works of demolition, shall take place until a scheme for the provision of a play area within the site, including details of its siting, design, equipment, materials and boundary treatments; as well as a timetable for its installation and provisions for its future management and maintenance, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

9) All of the dwellings hereby permitted shall be built in accordance with the Lifetime Homes Standards.

10) No development shall take place, except for works of demolition, until a scheme to provide for the following has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

- a) All dwelling to meet the target for water use of 105 litres or less per person per day, excluding an allowance of 5 litres or less per person per day for external use.
- b) The development overall to achieve a 19% reduction in CO<sub>2</sub> emissions over that required by the Building Regulations, 2013.
- 11) The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment and Drainage Assessment (Ref 132034-R1(3), by RSK, December 2013), incorporating the mitigation measures detailed therein, to limit surface water run-off generated by the 1 in 100 climate change critical storm event so that it shall not exceed the run-off from the site as existing and not increase the risk of off-site flooding. The mitigation measures shall be implemented before the development is occupied, or in accordance with any phasing with the prior written agreement of the local planning authority.
- 12) If, during demolition or construction, any contamination not previously identified is found to be present on the site, then work shall cease until a Remediation Strategy detailing how the contamination shall be dealt with has been submitted to and approved in writing by the local planning authority. All further work shall be carried out in accordance with the approved strategy.
- 13) The Landscaping Scheme set out in the Landscape Masterplan (Drawing No 1353/002 Rev I, by Murdoch Wickham), including all planting, seeding or turfing comprised in therein shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. The landscaped areas shown shall be permanently retained for that purpose and any trees, shrubs or plants which, within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 14) Before any of the dwellings hereby approved is occupied, a Landscape Management Plan for all landscaped areas except for small, privately owned domestic gardens, shall be submitted to and approved in writing by the local planning authority. The Plan shall include details of the long-term design objectives for the landscaped areas, along with management responsibilities and maintenance schedules for them for a period of at least 10 years from the date of completion of the development. The Plan shall be carried out as approved.
- 15) The garages and car parking areas shown on the approved plans shall be provided with a hard bound, dust-free surface, and be adequately drained before the dwellings to which they relate are occupied. Thereafter, they shall be kept free from obstruction for use for their intended purpose and shall not be used other than for the parking of vehicles by residents of the development and their visitors.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no extensions (including porches or dormer windows) to the dwellings hereby permitted shall be erected within its curtilage.

- 17) The roof areas of the buildings hereby permitted shall not be used as a balcony, roof garden or similar amenity area without the grant of further specific permission from the local planning authority; and they shall not be accessed other than for maintenance purposes.
- 18) The rating level of the noise of the CHP Plant, determined by the cumulative sound emissions of the Energy Centre, shall be at least 5dBA lower than the existing background noise level at all times of operation. The noise level shall be determined 1m externally from any window at the nearest residential façade. All measurements and assessments shall be carried out in accordance with British Standard 4142:1997.

End.



## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Simon Bird QC	Instructed by Head of Legal Services, LB Richmond Council.
He called: Hannah Parker, Mplan BSc	LB Richmond Council.

### FOR THE APPELLANT:

Russell Harris QC	Instructed by Charlie Reid, Ashurst LLP.
He called: Matthew Allchurch Richard Brookes, BSc (Hons) MTP (Urban Conservation) MRTPI IHBC Dunelm	Matthew Allchurch Architects. Turley Limited.

### INTERESTED PERSONS:

Gwen Dornan	Local Resident.
André Frieze	Local Resident.
Cllr David Cunningham	Elected Member for Tudor Ward, Royal Borough of Kingston upon Thames Council.
Iain Martin, MSc CMILT	Local Resident.
Richard P Gandy	Local Resident, on behalf of himself and eight other residents of The Shires.
Jeeun Song-Dusoir	Local Resident.
Morgan Reynolds	Local Resident, on behalf of himself and seven other residents of Bainbridge Close.

## **DOCUMENTS PROVIDED AT THE INQUIRY**

1. Revised Statement of Common Ground in respect of Scheme 1 and Scheme 2, dated 11 May 2015.
2. Draft S106 Agreement – Scheme 2.
3. Note addressing Inspector’s Pre-Inquiry Queries.
4. Opening Submissions of the Appellant.
5. Opening Statement on behalf of the Council.
6. Submission of André Frieze.
7. Appeal decision Ref APP/X5210/A/12/2173598.
8. Viability Statement of Common Ground, dated 12 May 2015.
9. Agreed wording to replace suggested Condition No 14.

10. Confirmation of correct plan/drawing numbers.
11. Letter from Head of Planning & Transport at Royal Borough of Kingston upon Thames Council (undated but received 13 May 2015) regarding affordable housing viability.
12. Additional suggested conditions regarding landscape management and children's playspace.
13. Technical Note on traffic issues raised by Inspector and interested parties, by Jamie Connors, dated 13 May 2015.
14. Note regarding effects on Nos 149-151 Latchmere Lane; and the National Housing Standards.
15. Closing Submissions on behalf of the Council.
16. Closing Submissions on behalf of the Appellant.
17. Completed S106 Agreement, Scheme 1, dated 13 May 2014.
18. Completed S106 Agreement, Scheme 2, dated 13 May 2014.

End.